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In The

Supreme Court of the United States

October Term, 1991

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner,

vs.

KEVIN KRUEGER,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the exclusionary rule operates to suppress evidence obtained following an illegal arrest for driving under the influence of alcohol, in a civil proceeding concerning the right of the arrestee to keep his driver's license.

2. Whether an entry of a home was proper when the objective facts established the existence of an emergency, but the police were found to have a motive to investigate, and their actions following the entry were found to have been consistent with investigation.

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No. _____

In The

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PEOPLE OF THE STATE OF ILLINOIS,

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vs.

KEVIN KRUEGER,

Respondent.

Petition For Writ Of Certiorari To The Appellate Court Of Illinois, Second Judicial District

PETITION FOR WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully prays that a Writ of Certiorari be issued to review the judgment of the Appellate Court of Illinois.

OPINION BELOW

The Illinois Appellate Court – Second District, issued its opinion in this case on February 21, 1991, which opinion is reported at 208 Ill.App. 3d 897, 567 N.E.2d 717, 153 Ill.Dec. 759. Therein, the court determined that the State could not refuse to rescind the suspension of the respondent's drivers license, which suspension resulted from his arrest for driving under the influence of alcohol

and the subsequent blood alcohol test, if the arrest was illegal. The court thereafter found the arrest illegal, although the police entered the respondent's home following an automobile accident and under circumstances that indicated the existence of an emergency.

The Illinois Appellate Court accordingly reversed the order of the trial court which denied rescission of the suspension of the respondent's driver's license. A copy of the Illinois Appellate Court's opinion is included herein as Appendix A to this Petition.

JURISDICTION OF THE COURT

The opinion of the Illinois Appellate Court reversing the order of the Circuit Court was issued on February 21, 1991. The People of the State of Illinois timely petitioned the Illinois Supreme Court for Leave to Appeal; said Petition was denied on October 2, 1991. This Petition is filed within ninety days of that order.

This Court's jurisdiction is invoked under 28 U.S. § 1257(3), since in the proceedings in the state courts of Illinois the respondent has asserted an alleged violation of his rights arising under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV provides that:

> The right of the People to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV provides, in pertinent part, that:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On October 8, 1989, Kevin Krueger, the respondent, was arrested and charged by complaint with driving under the influence of alcohol and driving with a blood alcohol concentration of .10 or greater in violation of Ch. 95½, Section 11-501 of the Illinois Motor Vehicle Code. (C. 2-3). The defendant was also charged by Uniform Traffic Ticket with Improper Lane Usage and Failure to Give Information after Striking an Unattended Vehicle or Other Property. (C. 9-10). On October 19, 1989, he filed a

Petition to Rescind the summary suspension of his driving privileges that resulted from the charge of driving under the influence. (C. 11-13).

The respondent called Mary Jane Dachtera, a neighbor of the respondent's, as his first witness. (C. 54, 55). On October 8, 1989, at approximately 1:00 a.m., she heard sounds of the police officers from the Elmhurst, Illinois, police department knocking on the windows and doors of the respondent's home next door. (C. 55). One of the police officers stated that Kevin Krueger had been in an accident and that they needed to talk to him. (C. 57). Ms. Dachtera went to the house, tried several doors, and found a side door unlocked. (C. 58). She entered and went upstairs to the respondent's bedroom, while the police remained outside the home. (C. 58). Ms. Dachtera found the respondent asleep in his bedroom. (C. 58). She went downstairs and told the police that he was asleep, "out of it," but fine. (C. 59). She opened the screen door and the police told her to hold back the dog. (C. 59). Three police officers entered the house, went up to the bedroom, and woke the respondent. (C. 60). The police told him to get dressed and said that they needed to take him downstairs to talk to him. (R. 60).

Patricia Krueger, the respondent's mother and the owner of the home in which the respondent resides, stated that she had not given permission to Ms. Dachtera to allow anyone to enter her home. (C. 87-88). She had told Mary Dachtera to keep an eye on their home while they were in Florida, but Mary did not have a key to the house, and was not "in charge" of the house. (C. 92). Mrs. Krueger had seen the respondent return home shortly before 1:00 a.m., and noticed nothing unusual about his

appearance. (C. 95). Mrs. Krueger and her husband had left the house to look for the respondent's car, which the respondent had told them was lent to a friend. George Krueger, father of the respondent, testified that he and his wife own the home in which the respondent resides. (C. 97). He stated that he did not give consent to Mary Dachtera or the Elmhurst Police to enter their home. (C. 98).

The respondent testified that, on October 8, 1989, he resided at the home of his parents in Elmhurst, Illinois. He came home that night at about 12:45 a.m., and consumed three or four rum-and-cokes. (C. 103, 105-106). He did not consent to the entry of the Elmhurst Police into his home that day. (C. 103). He was in his bedroom when the police entered. (C. 104).

On cross-examination, he said that he had been driven home that evening in his car by one of his friends. (C. 105). When he arrived home he did not know where his car was. (C. 108). He admitted vomiting while in his bed. (C. 109). Although he did not hear Mary Dachtera enter the house or his bedroom, he woke up while she was there and he indicated to her that he was okay. (C. 111). Then, Mary returned with several police officers, (C. 112), who stated they wanted to talk about the accident. (C. 108). The respondent said that he had told the officers that he had panicked and lost his head, that he was drunk, had had a few mixed drinks and was sorry. (C. 114). He was not referring to the accident when he said he was sorry. (C. 114). The officers pulled the respondent downstairs and ordered him to dress prior to questioning, he asserted. (C. 115). Field sobriety tests were given

to the respondent in his living room. (C. 117). He admitted falling during the balance test, and also fell during the walk and turn test. (C. 118). The respondent asserted that his speech was not slurred or mumbled. (C. 120).

The arresting officer, Richard Lewis of the Elmhurst, Illinois, Police Department, testified that he was a certified breathalyzer operator. (C. 125). He received a report of an accident at approximately 12:46 a.m. on October 8th and arrived at the respondent's home around 1:30 a.m. He administered a breath test to the respondent at around 2:35 a.m. (C. 127).

Officer Lewis stated that he had gone to the scene of an accident, where he observed four damaged mailboxes and pieces of a T-top. (C. 130-132). Two other officers joined him; they went to a Ramada, where they observed a white, 1976 Oldsmobile with damage consistent with the accident scene, and vomit "all over" the inside. (C. 133, 135, 141). They then went to respondent's residence. (C. 136). After the officers knocked on the door and received no answer, they telephoned the residence and again received no answer. (C. 136). The neighbor appeared after they knocked on the side door. She told them that she was housewatching because the owners were away on vacation. (C. 138). He told her that he wanted to talk to the respondent about the accident. (C. 138). Mary Dachtera entered the home while the officers remained outside. (C. 139). She returned and said that the respondent had vomited and was unresponsive, and then she opened the door. (C. 140). Officer Lewis testified that police ran inside solely to check on the well-being of the respondent. (C. 141).

The police entered the respondent's bedroom, where they found him asleep with vomit on him. Officers checked his pulse and shook him to wake him up. (C. 142-143). The respondent had a strong odor of alcohol on his breath and his eyes were glassy. He was told to put on some clothes and go downstairs.

The defense rested and the State moved for a directed finding. (C. 145). The defendant argued that a lawful arrest was required to invoke the provisions of the implied consent statute, and that if the arrest was unlawful, a rescission was in order. He asserted that warrantless entry into the home without exigent circumstances violated the Fourth Amendment and was proper grounds for a rescission. (C. 44-48). The trial court ruled that an arrest need not be lawful to support a summary suspension. (C. 45).

The trial court found that the warrantless entry into the home was without exigent circumstances. The court found that the arrest of the respondent took place in the living room after field sobriety tests, (C. 157-158) and that ample probable cause existed at that time to believe that he was under the influence of alcohol. (C. 158). Based upon the fact that the respondent was the registered owner of the vehicle and that there was vomit in the car and on the respondent, the court found probable cause to believe that the respondent was the driver of the motor vehicle. (C. 158).

Based on these findings, the court denied the motion to rescind the mandatory summary suspension of respondent's driver's license, but ordered the suspension stayed pending this appeal. (C. 29). The Appellate Court

reversed the trial court's ruling on February 21, 1991, finding that there were no exigent circumstances to enter the home, and that a driver's license cannot be suspended summarily based on an arrest that is illegal under the Fourth Amendment.

Petitioner sought Leave to Appeal in the Illinois Supreme Court; Leave was denied on October 2, 1991.

REASONS FOR GRANTING THE WRIT

I.

THE EXCLUSIONARY RULE SHOULD NOT BE APPLIED TO SUPPRESS EVIDENCE OBTAINED FOLLOWING AN ILLEGAL ARREST FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL IN A CIVIL PROCEEDING CONCERNING THE STATUS OF THE DRIVER'S LICENSE, AND UNRELATED TO ANY CRIMINAL PROCEEDINGS CONCERNING THE SAME INCIDENT

To attack the carnage visited on our highways by those who drive while under the influence of alcohol, the Illinois legislature has enacted two sets of procedures. The first directly criminalizes such behavior. *Ill.Rev.Stat.*1989, Ch. 95½, § 11-501. In addition, like many other states, Illinois has instituted a procedure wherein the driver's license is suspended if he either refuses a test of his blood or breath for alcoholic content, or if such a test shows that he is intoxicated. *Ill.Rev.Stat.*1989, Ch. 95½, § 11-501.1. The driver is entitled to seek rescission of the suspension at a civil proceeding wherein he assumes the burden of proof. *Ill.Rev.Stat.*1989, Ch. 95½,

§ 2-118.1; *People v. Gerke*, 123 Ill.2d 85, 525 N.E.2d 68, 121 Ill.Dec. 282 (1989); *People v. Orth*, 124 Ill.2d 326, 530 N.E.2d 210, 125 Ill.Dec. 182 (1988).

There is no doubt that, if the driver is arrested in violation of the Fourth Amendment, any evidence resulting from that arrest is inadmissible in the criminal proceeding. However, the Illinois Appellate Court has also held that the State must rescind the civil suspension of the driver's license if the arrest violates the Fourth Amendment.

Although this Court has reviewed the constitutionality of procedures involving the suspension of a driver's license for driving while intoxicated, see: *Mackey v. Montrym*, 443 U.S. 1, 99 S.Ct. 2612 (1979); *Illinois v. Batchelder*, 463 U.S. 1112, 103 S.Ct. 3513 (1983), it has not addressed the applicability of the Fourth Amendment exclusionary rule to such proceedings. The issue was suggested in *Welsh v. Wisconsin*, 466 U.S. 740, 104 S.Ct. 2091 (1984). However, this Court determined that a legal arrest was required as a matter of state law, and, while the issue of the legality of the arrest was determined in accordance with the principles of the Fourth Amendment, it was stated expressly that the case did not implicate the exclusionary rule. *Id.* at 746, n. 5.

The opinions in *Welsh*, taken together, leave strong doubt that the exclusionary rule must be applied in civil proceedings involving the suspension of a driver's license. In a dissent based on the position that a state's determination to require a lawful arrest does not raise a federal issue, it was stated:

> Although the State is entitled to draw this conclusion and to implement it as a matter of State law, I am very doubtful that the policies underlying the Fourth Amendment would require exclusion of the fruits of an illegal arrest in a civil proceeding to remove from the highways a person who insists on driving while under the influence of alcohol. *Id.* at 758-759, 104 S.Ct. at 2102. (White, J. dissenting).

This case squarely presents the issue that was reserved in *Welsh*. In this case, the trial judge refused to rescind the summary suspension of the respondent's license, despite the fact that he held the police entry of the respondent's home to be violative of the Fourth Amendment, because he found that an arrest need not be lawful to support a summary suspension. (C. 45). The Appellate Court refused to address the matter as a question involving the exclusionary rule, rephrasing the issue as "whether the statute affirmatively authorizes the Secretary of State to suspend a motorist's license on the basis of a search which itself is the product of an unauthorized arrest." *People v. Krueger*, 208 Ill.App.3d 897, 567 N.E.2d 717, 721, 153 Ill.Dec. 759, 763 (2nd Dist. 1991). This attempt to reconstrue the issue is untenable. The People do not assert, and have never asserted, that their legislature is empowered to enact legislation in derogation of the United States Constitution. The question presented is instead whether evidence obtained as a result of an illegal arrest can be introduced to support the civil suspension of a driver's license. It is elementary that suppression of evidence as a result of a Fourth Amendment violation is the operation of the exclusionary rule, and the attempt of

the Appellate Court to rephrase the issue cannot alter that basic fact.

Although the Appellate Court purported to construe the intent of the legislature, there is no basis for a finding that its ruling is based in Illinois law. The legislation itself does not impose a requirement of a legal arrest. The statute creating the procedure by which a driver can seek to rescind the summary suspension of his license requires that an arrest must precede the request that the driver take the test, but it does not specify that the arrest be lawful. *Ill.Rev.Stat.*1989, Ch. 95½, § 2-118.1. It is significant that, in a predecessor statute, the Illinois legislature required the arresting officer to swear that the tests were requested following a lawful arrest. *Ill.Rev.Stat.*1983, Ch. 95½, § 11-501.1(c). Any reference to a lawful arrest was deleted when the statute was amended and reenacted, less than two years after the decision in *Welsh, supra*. This strongly suggests that, in light of *Welsh*, the legislature chose to eliminate any independent statutory requirement that the arrest be lawful, and to rely solely on the requirements of the United States Constitution as to the applicability of the exclusionary rule. When the Appellate Court construed the statute as requiring a legal arrest, it did so pursuant to its duty to construe a statute in a manner that would be constitutional, and its belief that to permit suspension of drivers' licenses based on illegal arrests would not be constitutional.

It is apparent that, when it assessed the concept of constitutionality, the Appellate Court applied Fourth Amendment principles. There is no reliance on the Illinois Constitution as a source of rights against unreasonable search and seizure that are more expansive than

those protected by the Fourth Amendment. The Illinois Supreme Court has held that the protection afforded by its State Constitution is no more extensive than that provided by the Federal Constitution. *People v. Tisler*, 103 Ill.2d 226, 469 N.E.2d 147, 155-157, 82 Ill.Dec. 613, 621-623 (1984). The result in this case cannot be defended as a matter of State law.

Accordingly, this case cannot be addressed as a state court decision construing a state statute. The Illinois Appellate Court has held that the Fourth Amendment compels the suppression of the fruits of an arrest at a summary suspension hearing when the arrest does not comply with that amendment. This application of the exclusionary rule is incorrect.

This Court has recognized that the exclusionary rule "has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons." *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613 (1974). In *Calandra*, this Court determined that the exclusionary rule should not be applied to suppress evidence in grand jury proceedings. It was reasoned that extension of the rule would seriously impede the grand jury, due to the delay and disruption inherent in suppression proceedings; it was recognized that suppression hearings could necessitate extended litigation of issues only tangentially related to the grand jury's primary objective. This Court weighed this detriment against the primary benefit of the exclusionary rule, the deterrence of police misconduct, and concluded that such benefit would not be meaningfully advanced. It was recognized that police would have little incentive to disregard the Fourth Amendment to obtain evidence for a grand jury

proceeding when such evidence would be suppressible at the ultimate trial.

Similar considerations apply to the type of proceeding at issue herein. In permitting mandatory summary suspension of a driver's license, the legislature intended to create an expedited procedure that would enhance public safety by removing the privilege to drive from those exercising that privilege while impaired by alcohol or drugs, and that would also protect a defendant's due process rights with a prompt review of such suspension. The suspension must be imposed, and the hearing to rescind must be held without delay to achieve this purpose. See: *Mackey v. Montrym, supra.* The imposition of procedures attendant to suppression of evidence would destroy the salutary purpose of these procedures, in interposing a time-consuming and complex hearing that is not related to the issues delineated by, or the intent of, the statute.

The Appellate Court sought to respond to this analysis by asserting that an exclusionary rule is already interposed into the hearing, in that the State must show that there were reasonable grounds to believe that the person was in control of an automobile while under the influence. *Ill.Rev.Stat.*1989, Ch. 95½, § 2-118.1(b)(2). However, that inquiry represents the threshold factual basis necessary for the request that a blood alcohol test be administered. All other aspects of the arrest, such as the grounds for an initial traffic stop, the presence of exigent circumstances, the right of the officers to make an arrest at the time and place involved, all present the minutiae of

Fourth Amendment law.[1] This does not comport with the purpose of these proceedings and will in no way advance them.

The countervailing benefit to any imposition of the exclusionary rule must be a finding that its application would deter police misconduct. It is acknowledged that the summary suspension procedure might motivate violation of the Fourth Amendment, for it offers a remedy to the State against impaired drivers that does not require a criminal conviction. Yet, the nature of that remedy is quite limited as compared to the penalties that might be imposed following a full criminal action. Notably, in Illinois, the penalties for driving under the influence include revocation of the driver's license rather than mere suspension, *Ill.Rev.Stat.*1989, Ch. 95½, § 11-501(g), and increase significantly for the second and third convictions. *Ill.Rev.Stat.*1989, Ch. 95½, § 11-501(c), (d). Indeed, if the officer obtains legal evidence from the testing, or evidence of the refusal, that evidence is admissible in the criminal case. *Ill.Rev.Stat.*1989, Ch. 95½, § 11-501.2. The police officer thus would sacrifice significant sanctions against a drunk driver if he chose to proceed outside of the constraints of the Fourth Amendment. A reasonable police officer would not forego the opportunity to obtain a criminal conviction merely to deprive a driver of his license for a short period of time.

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[1] The nature of such an inquiry, and its divorcement from the bare question of the basis of the arrest, is amply demonstrated by perusal of Question 2 of this petition, despite the fact that the question was narrowed for purposes of this petition.

The use of the exclusionary rule in these proceedings is inappropriate.

The Appellate Court invoked a number of decisions from various jurisdictions in support of its conclusion. Only two states have concluded that the exclusionary rule does not apply in proceedings to suspend a drunk driver's license. One of those states adheres to that rule, *Commonwealth of Pennsylvania Department of Transportation v. Wysocki*, 517 Pa. 175, 535 A.2d 77 (1987), while the second suffered a declaration of unconstitutionality by a Federal District Court. *Holland v. Parker*, 354 F.Supp. 196 (D. S.D. 1973). In light of *Holland*, which preceded *Welsh*, other states similarly concluded that evidence gathered as a result of an illegal arrest could not sustain the suspension of a driver's license. See: e.g. *State v. Mulcahy*, 202 N.J. Super 389, 495 A.2d 166 (1985), aff'd in part, rev'd in part on other grounds, 107 N.J. 467, 527 A.2d 368 (1987); *Gallagher v. Michigan Secretary of State*, 59 Mich.App. 269, 229 N.W.2d 410 (1975); *State v. Wetherell*, 82 Wash.2d 865, 514 P.2d 1069 (1973); *Stark v. New York State Department of Motor Vehicles*, 104 A.D.2d 194, 483 N.Y.S.2d 824 (1984). To the extent that these states, along with Illinois, reached a result that is believed to be mandated by the Constitution as a result of an erroneous district court opinion, review of this case will permit a reevaluation of those procedures in accordance with each state's goals. This alone is a compelling reason to grant a writ of certiorari.

Certiorari should be granted to determine whether the exclusionary rule should be applied in a civil proceeding wherein a person arrested for driving under the influence of alcohol seeks rescission of the suspension of

his driver's license. The ruling of the Illinois Appellate Court – Second District should be reversed.

II.

THE PROPRIETY OF AN EMERGENCY ENTRY INTO A HOME IS TO BE ASSESSED BY THE OBJECTIVE CIRCUMSTANCES, AND NOT BY THE OFFICER'S MOTIVES. THE CIRCUMSTANCES IN THIS CASE JUSTIFIED THE ENTRY, AND THE OFFICER'S ACTIONS SUBSEQUENT THERETO WERE BASED ON EVIDENCE THAT LEGALLY CAME TO THEIR ATTENTION.

If it is determined that the exclusionary rule is applicable to cases involving the summary suspension of a driver's license, the petitioner contends that the arrest in this case was proper, when the police had reasonable grounds to believe that a person within the premises was in need of assistance.

This Court recognized the "emergency exception" as applicable when police officers reasonably believe that a person within is in need of immediate aid. *Mincey v. Arizona,* 437 U.S. 385, 98 S.Ct. 2408 (1978). Although it would seem that this exception to the warrant requirement is well-established, the rulings of the trial and Appellate Courts suggest that misunderstanding continues to exist.

The trial judge specifically found that sufficient facts existed to support a reasonable belief that the respondent, who had fled the scene of an automobile accident and was in his home, was in need of aid. However, he declined to apply the emergency exception pursuant to a

finding that the officers had mixed motives, having both the intent to aid the respondent and the intent to investigate. This Court has rejected such an analysis in a different context. It is recognized that police actions under the Fourth Amendment should be evaluated pursuant to an objective test, examining the legality of the officer's actions by the circumstances surrounding the act, and not by the officer's motive. *Scott v. United States*, 436 U.S. 128, 98 S.Ct. 1717 (1978). The trial court's treatment of the issue was erroneous.

The Appellate Court chose to apply its own reasoning to the facts, and drew the conclusion that the State did not meet its heavy burden to show that entry of the home was legal. It had three bases for this determination. First, it was determined that the police had insufficient facts to form a reasonable belief that assistance was needed. Briefly, the officers knew that there had been an accident, wherein the car ran off the road onto a parkway, and hit a pole, flattening it almost to the ground. (C. 132). When the car was found, police observed vomit "all over" the inside. (C. 141). The police attempted to get a response at the home, by knocking at the door loudly enough to wake a neighbor, and by having a dispatcher telephone. (C. 55, 136, 137). The neighbor entered the house, and returned with the cryptic report that the respondent was upstairs, asleep, "out of it," but "fine." (C. 59). In light of the facts known to them, the police were not required to accept a layperson's ambiguous comment, as the Appellate Court seemed to believe.

The deliberation the Appellate Court would require in this situation has been rejected:

> The need to protect or preserve life or to avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. Fires or dead bodies are reported to police by cranks where no fires or bodies are to be found. Acting in response to reports of 'dead bodies' the police may find the 'bodies' to be common drunks, diabetics in shock, or distressed cardiac patients. But the business of policemen and firemen is *to act*, not to speculate or meditate on whether the report is correct. People could well die in emergencies if police tried to act with the calm deliberation associated with the judicial process. Even the apparently dead often are saved by swift police response. *Wayne v. United States*, 115 U.S.App.D.C. 234, 318 F.2d 205 (1963), (opinion of Burger, J.), cert. den. 375 U.S. 860; cited with approval in *Mincey v. Arizona, supra.*

The circumstances known to police at the time of the entry justified the belief that an emergency existed.

The Appellate Court's second basis for rejecting the entry as an emergency is its conclusion that the police entered for the purpose of investigation. As noted, the question of motivation is not relevant, when the objective facts show an emergency.

Finally, the Appellate Court concluded that the officers' actions exceeded their emergency purpose. This conflicts with the court's acknowledgment that police may seize evidence in plain view during an emergency. Even as police assessed the respondent's condition to determine that he did not need immediate medical attention, they would have been able to recognize his state of

intoxication. Thus, they were entitled to pursue further collection of evidence of his condition.

This case offers an opportunity to address application of the emergency exception, as to facts constituting an emergency, as to the officer's motives in entering when an emergency is presented, and in the actions that can be taken after entry. Certiorari should be granted to address these issues, and the judgment of the Illinois Appellate Court – Second District should be reversed.

CONCLUSION

For the foregoing reasons, petitioner requests that a Writ of Certiorari be issued to review the decision of the Appellate Court of the State of Illinois and, upon review, to reverse that court's decision in this case.

Respectfully submitted,

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APPENDIX

A

No. 2-89-1207

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN KRUEGER, Defendant-Appellant.	Appeal from the Circuit Court of Du Page County. No. 89-DT-3744 Honorable Peter J. Dockery, Judge, Presiding.

(Filed Feb. 21, 1991)

JUSTICE DUNN delivered the opinion of the court:

The defendant, Kevin Krueger, appeals a trial court order denying his petition to rescind the summary suspension of his driver's license (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 2-118.1). The trial court held that the suspension was valid even though the warrantless arrest of the defendant inside his home, on which the suspension was predicated, violated the defendant's right to be free of unreasonable searches and seizures. On appeal the defendant argues that the summary suspension of his driver's license pursuant to section 11-501.1 of the Illinois Vehicle Code (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 11-501.1) may not be predicated on an illegal arrest. We agree and reverse.

On October 8, 1989, the defendant was arrested and charged with driving under the influence of alcohol (Ill. Rev. Stat. 1989, ch. 95 1/2, pars. 11-501(a)(1), (a)(2).) He received notice that his license would be suspended. On October 19, 1989, the defendant filed a petition to rescind the suspension, and a hearing on the petition was held on November 6, 1989. The trial court denied the petition on that day and, on November 19, 1989, denied the defendant's motion to reconsider the judgment but granted a stay of the suspension pending appeal.

Testimony at the hearing on the defendant's petition to rescind centered on the events of the early morning of October 8, 1989. The defendant resided with his parents and brother at 1009 Riverside Drive in Elmhurst. Mary Dachtera, who resided next door at 1005 Riverside Drive, was awakened at approximately 1 a.m. by noises coming from the area of the Kruegers' home. She heard knocking on the window or door of the Kruegers' house and, looking out her windows, observed three uniformed officers of the Elmhurst police department outside. She went out the back door and started talking to the policemen. One of the officers told Dachtera that the defendant had been in a car accident and that they needed to talk to him. After finding an unlocked door, Dachtera went upstairs and called the defendant's name. She found that the defendant was sound asleep in his bed and, according to her testimony, went downstairs, opened the front door and told the officers that the defendant was upstairs and that she could not wake him up. She also told the officers, "[h]e is out of it, but he is fine."

After the officers insisted that they needed to talk to the defendant, Dachtera let them in, and the four proceeded upstairs to the defendant's bedroom. One officer

woke up the defendant, and, after the defendant sat up, the officer asked him to get dressed and go downstairs to talk with them. Dachtera went downstairs, and a few minutes later the officers brought the defendant, now dressed, down to the dining room table to talk with him. Dachtera, who had telephoned the defendant's sister, did not hear the questions that the officers asked the defendant.

The defendant's mother, Patricia Krueger, testified that she and her husband had just returned from Florida on the afternoon before their son was arrested and that before going on vacation they had told Mary Dachtera to watch the house. They did not give Dachtera a key to the house or permission to enter the house or to allow others to enter. Mrs. Krueger testified that slightly before 1 a.m. on October 8 she and her husband talked with their son, who had just come home. They asked him where his car was; he replied not to worry, that a friend had driven him home; they went out to find his car. The defendant's father, George Krueger, testified that Mary Dachtera had not been given consent to allow any individuals to enter the Kruegers' home and that the Kruegers had not consented to the entry of the police into their home on October 8, 1989.

The defendant testified that he arrived home about a quarter to one on the morning of October 8, having been driven home in his car by a friend whose identity he could not recall. He acknowledged that, before coming home, he had had "a lot to drink," specifically three or four bacardi and rum mixed drinks. He testified that he talked to his parents, consumed "a couple of [alcoholic] drinks," and went to bed. He did not hear the officers

knocking or Mary Dachtera calling. He did not give the police consent to enter his home, was asleep when the officers entered his bedroom, and was never asked by the officers if he minded their being there. The defendant testified that one officer asked him to talk about the accident, that he agreed to do so, and that he told the officer that he had lost his head and panicked. Under a continuing objection by his attorney, the defendant testified further that he told the officer that he had had too much to drink, was drunk, and was sorry. He testified that after this questioning the officers ordered him to dress and come downstairs, that downstairs the officers questioned him some more about the accident, and that they then had him perform some field sobriety tests. The defendant admitted that he fell several times while performing the balance test and the walk-and-turn test and that he did badly on the heel-to-toe test.

Officer Richard A. Lewis of the Elmhurst police department testified that at 12:46 a.m. on October 8, 1989, he received a report of an unknown vehicle striking some mail boxes on the frontage road of Route 83. When he arrived at the accident scene, he observed that the vehicle had left the roadway, struck and flattened a pole that held four mailboxes, and left behind a passenger side T top and other vehicle parts. With the help of other officers, he located the vehicle two blocks away in the parking lot of the Ramada Inn. He ran a check on the license plate and went to the defendant's address. He went to the front porch, knocked on the door and got no answer. A call to the residence by the dispatch system also received no reply. Officer Lewis and two other officers knocked on the back door, and, after Mary Dachtera asked what the

problem was, he told her that there had been an accident involving the defendant's car and that he wanted to talk to the defendant about it.

Officer Lewis testified that Mary Dachtera went into the Kruegers' house for a couple of minutes and came back down. According to Lewis, Dachtera told the officers that the defendant was in his bedroom, that he had vomit on him, that he was unresponsive to her yelling and shaking him, and that he did not wake up. Dachtera opened the door and let the officers inside. Officer Lewis testified that he entered solely to check on the defendant's well-being and was afraid that the defendant may have suffered internal injuries or choked on his own vomit. After seeing the defendant asleep in the bedroom, Officer Lewis checked for the defendant's pulse and breathing and shook the defendant awake. Officer Lewis noted that the defendant's breath smelled strongly of alcohol and that the defendant's eyes were very glassy. He asked the defendant if the latter minded his being there, and the defendant said that he did not care. On the request of the police, the defendant got dressed and went downstairs. Officer Lewis arrested the defendant in the house between 1 and 1:30 a.m. and administered a breath test on the defendant at 2:35 a.m.

Officer Lewis acknowledged that he had received no consent to enter the Kruegers' home. He was aware before entering that Mary Dachtera was a neighbor, not the owner of the house.

Officer Lewis acknowledged that the breathalyzer test he gave the defendant reflected the effect of any alcohol the defendant may have consumed after 12:46

a.m. He acknowledged that the machine could not differentiate between predriving and post-driving alcohol consumption and that if the defendant had had any alcoholic beverages after driving, the machine would not accurately reflect his blood-alcohol content at the time of driving.

The trial judge held initially that the inclusion of the effect of post-driving alcohol consumption in the results of the breathalyzer test did not violate due process. The trial judge then held that the warrantless entry into the defendant's home was illegal. The trial judge found specifically that the police entered without consent, that Mary Dachtera had told the officers that the defendant was asleep but was fine and not, as Officer Lewis had testified, that she had told him that the defendant was unconscious and unresponsive, and that the officers entered not merely to check on the defendant's health but also to investigate the defendant's possible driving under the influence. The trial judge concluded that there were no exigent circumstances to validate the warrantless entry into the defendant's home.

The trial judge also found that the defendant was arrested in his living room after the field sobriety tests, that the defendant had cooperated with the officers' request that he take those tests, and that the officers at the time of arresting the defendant had probable cause to believe that the defendant had been driving while under the influence of alcohol. The trial judge also concluded that without evidence of the defendant's blood-alcohol test reading, he could not state by a preponderance of the evidence that the extra two drinks that the defendant

consumed at home caused the reading to meet or exceed .10 of 1%. The court denied the petition for rescission.

In denying the petition and the subsequent motion to reconsider, the trial judge reasoned that to grant rescission because the arrest of the defendant was illegal would amount to the improper application of the exclusionary rule to a civil proceeding. He explained further that the police did not have probable cause to arrest the defendant until after the warrantless entry into his home, when they were able to view the defendant with vomit on him and to infer that the defendant had driven the vomit-soaked automobile. The trial judge granted a stay of the suspension pending the resolution of this appeal.

On appeal the defendant argues that the summary suspension of his driver's license must be rescinded because he was not lawfully arrested as required by statute. The State replies that the statute requires the trial court find only that the defendant was arrested, that the arresting officer had reasonable grounds to believe that the defendant was driving under the influence of alcohol, and that the defendant either refused a breathalyzer test or took a valid breathalyzer test that produced a result of .10 or more. The State argues that to require that the underlying arrest be valid would amount to the improper imposition of the exclusionary rule in a civil proceeding. The State also argues that, even if the legality of the defendant's arrest is in issue, the trial judge's findings of fact require us to conclude that the arrest was valid. The defendant replies that Illinois' courts have reversed suspensions where the initial arrests were unlawful, that the majority of other jurisdictions that have considered the issue have required a lawful arrest for a summary license

suspension, and that the statute itself indicates the legislature's intent to guard the motorist's fourth amendment rights.

The defendant also argues that the trial judge erred in not considering the defendant's post-driving, prearrest consumption of alcohol in evaluating the reliability of the breathalyzer test. Because we hold that the illegal arrest of the defendant requires reversal of the denial of the petition for rescission, we do not reach this issue.

Paragraph 2-118.1(b) of the Illinois Vehicle Code provides, insofar as is relevant here:

> "The scope of the hearing shall be limited to the issues of:
>
> 1. Whether the person was placed under arrest for an offense as defined in Section 11-501, or a similar provision of a local ordinance, as evidenced by the issuance of a Uniform Traffic Ticket; and
>
> 2. Whether the arresting officer had reasonable grounds to believe that such person was driving or in actual physical control of a motor vehicle upon a highway while under the influence of alcohol, other drug, or combination thereof; and
>
> * * *
>
> 4. Whether the person, after being advised by the arresting officer that the privilege to operate a motor vehicle would be suspended if the person submits to a chemical test, or tests, and such test discloses an alcohol concentration of 0.10 or more."

Ill. Rev. Stat. 1989, ch. 95 1/2, par. 2-118.1(b).

We hold that the arrest required by the first paragraph must be a lawful and valid arrest. We believe that this construction is consistent with our duty to ascertain and give effect to the intent of the legislature and to avoid, if possible, a construction which would raise doubts regarding the constitutionality and validity of the statute. *Harris v. Manor Healthcare Corp.* (1986), 111 Ill. 2d 350, 362-63.

The statue does not explicitly require that the initial arrest be lawful. Prior to 1986, the arresting officer was required to state, within his sworn report to the Secretary of State and the circuit court, that tests performed on the motorists had been made pursuant to and following the lawful arrest of the motorist for an offense as defined in section 11-501 of the Illinois Vehicle Code or a similar provision of a local ordinance. (Ill. Rev. Stat. 1983, ch 95 1/2, par. 11-501.1(c).) The defendant correctly notes that some cases decided under the statute as it was in effect prior to 1986 stated, at least in *dictum*, that a lawful arrest is a prerequisite to a valid summary suspension. (*People v. Hutchinson* (1986), 141 Ill. App. 3d 1086, 108 [sic]; *People v. Voigt* (1985), 131 Ill. App. 3d 510, 512.) Although the statute no longer requires the arresting officer to swear that the initial arrest was lawful, we cannot conclude that this amendment reflects a legislative intent to empower the Secretary of State to suspend a motorist's license where the motorist has not been lawfully arrested for driving under the influence. We find compelling reasons to avoid ascribing such an intention to the legislature.

First, as noted above, it is our duty to avoid a construction that would open the constitutionality of the implied-consent law to serious question. Although the State characterizes the issue in this case as whether to apply the exclusionary rule to a civil summary suspension proceeding, we believe that the real question before us is whether the statute affirmatively authorizes the Secretary of State to suspend a motorist's license on the basis of a search which itself is the product of an unauthorized arrest. The Secretary's power to impose a summary license suspension is derived from the statute, and we decline to read the statute as, in effect, authorizing unconstitutional arrests or searches and the imposition of new deprivations based on those unconstitutional arrests or searches.

A statute or rule that authorizes unconstitutional searches or seizures will be held unconstitutional. (*Holland v. Parker* (D. S.D. 1973), 354 F. Supp. 196, 199; *Hansen v. Illinois Racing Board* (1989), 179 Ill. App. 3d 353.) In *Holland v. Parker*, the Federal district court struck down a South Dakota implied-consent statute that did not limit the suspension power to cases where there had been a lawful arrest, explaining that to authorize blood tests not incident to a valid arrest would negate the motorist's right to be free of unreasonable searches and seizures. (See also *Schutt v. MacDuff* (1953), 205 Misc. 43, ___, 127 N.Y.S.2d 116, 126-28 (implied-consent law held unconstitutional because it authorized chemical tests without prior lawful arrest).) Although courts have recognized that a lawful arrest is not always a necessary prerequisite to a constitutionally valid blood or breath test. (see, *e.g.*, *State v. Anderson* (Me. 1982), 447 A.2d 827), the validity of

the test is still crucial to any license suspension under an implied-consent law, and a suspension may not be predicated on the fruits of unconstitutional police activity (*Holland*, 354 F. Supp at 198-99). We therefore decline the State's invitation to read the statute as authorizing such constitutionally dubious behavior.

Second, and relatedly, the Secretary of State receives his power to suspend the motorist's license from the latter's "implied consent" to the blood and breath tests as a condition of driving on the public highways of the State (Ill. Rev. Stat. 1989, ch 95 1/2, par. 11-501.1). To hold that motorists waive their right to be free of unconstitutional arrests and searches as a condition of operating motor vehicles would do violence to the principle of implied consent. In *Serpas v. Schmidt* (7th Cir. 1986), 808 F.2d 601, the court invalidated administrative rules of the Illinois Racing Board that conditioned the receipt of certain occupational licenses issued by the board on the licensees' implied consent to a variety of warrantless administrative searches. The court explained that the board could not validly condition a license on the applicant's waiver of his constitutional right to be free of unreasonable searches and seizures. (808 F.2d at 606-07.) The court in a subsequent action reiterated that the validity of any such implied consent was vitiated by the fact that it was premised on regulations that were unconstitutional and unauthorized because they allowed for unconstitutional and otherwise illegal searches. *Serpas v. Schmidt* (7th Cir. 1987), 827 F.2d 23, 29-30.

Third, even barring constitutional problems, we are unwilling to conclude that the legislature intended to authorize the suspension of drivers' licenses based on the

fruits of illegal arrests. The requirements of an arrest and reasonable cause are for the purpose of protecting the motorist against unlawful searches and seizures. (*People v. Carlson* (Colo. 1984), 677 P.2d 310, 317-18.) This purpose would be undercut if not frustrated by allowing the State to benefit from illegal or unauthorized arrests made by its agents. Furthermore, despite the State's dire warnings that such a legality requirement would necessitate a time-consuming hearing on ancillary issues and thus frustrate the legislative goal of an efficient, expedited proceeding, we note that in the vast majority of suspension cases the requirement of reasonable grounds (Ill. Rev. Stat. 1989, ch. 95 1/2, par. 2-118.1(b)(2)) operates as an exclusionary rule. As most DUI arrests are of motorists who have been driving or in control of vehicles on the highway, the necessary finding of reasonable cause will generally be tantamount to a finding that the arrest was legal, and a finding of no probable cause will necessitate rescission of the suspension even where the motorist has failed or refused to take a blood-alcohol test.

We believe the trial court erred in concluding that the legality of the defendant's arrest was not material to the suspension hearing because the exclusionary rule may not be applied to this civil proceeding. Although we agree that this proceeding is civil rather than criminal or quasi-criminal (*People v. Moore* (1990), 138 Ill. 2d 162, 168; see *United States v. Ward* (1980), 448 U.S. 242, 65 L.Ed.2d 742, 100 S.Ct. 2636), we reiterate that the issue here is not whether the court is to apply a judicially-created rule pursuant to its inherent authority but whether the statute should be construed to condition the Secretary of State's power to suspend a driver's license on the presence of a

valid arrest. Furthermore, the assumption that the exclusionary rule is necessarily inapplicable to State-initiated civil proceedings is not only incorrect (1 W. LaFave, Search & Seizure § 1.7, at 144-73 (2d ed. 1987)) but has been rejected by Illinois courts in the very context here. In *People v. Collins* (1987), 154 Ill. App. 3d 149, and *People v. Decker* (1989), 181 Ill. App. 3d 427, the court reversed denials of petitions for rescission because in each case the necessary finding of probable cause was the fruit of an unlawful arrest. The court, applying the exclusionary doctrine, therefore, found in each case that the statutory requirement of reasonable grounds was not satisfied by the legally admissible evidence. Although we agree with these cases insofar as they hold that a summary license suspension may not be predicated on an illegal arrest (or the fruits thereof), we prefer to rest our holding here on the construction of the statute that we have put forth rather than on the application of the exclusionary rule as such.

Finally, we note that our holding that the arrest required by the implied-consent statute must be a lawful arrest is in accord with the decisions of the great majority of the courts that have construed implied consent statutes that do not explicitly require a lawful arrest. *Bath v. Heckers* (Colo. App. 1974), 522 P.2d 108; *State v. Brunner* (1973), 211 Kan. 596, 507 P.2d 233; see *Gallagher v. Michigan Secretary of State* (1975), 59 Mich. App. 269, 229 N.W.2d 410; *Colling v. Hjelle* (N.D. 1963), 125 N.W. 2d 453; *State v. Mulcahy* (1985), 202 N.J. Super. 398, 495 A.2d 166, *aff'd in part, rev'd in part on other grounds* (1987), 107 N.J. 467, 527 A.2d 368; *White v. Oklahoma Department of Public Safety* (Okla. 1980), 606 P.2d 1131; *State v. Wetherell* (1973),

82 Wash. 2d 865, 514 P.2d 1069, see also *In re Gardner* (1979), 39 N.C. App. 567, 251 S.E.2d 723 (suspension may be based on illegal but constitutionally valid arrest). Contra *Commonwealth of Pennsylvania, Department of Transportation v. Wysocki* (Pa. 1987), 535 A.2d 77.

The State next argues that, even if the legality of the defendant's arrest is, as we hold, subject to review, the arrest was lawful because the officers' warrantless entry into his home was validated by (1) their reasonable belief that the defendant, having been involved in a serious automobile accident, was in need of their immediate assistance and (2) their need to preserve evidence of the defendant's offense of driving under the influence of alcohol. We hold that the trial court properly rejected both of these asserted justifications and correctly held that the entry and arrest were unconstitutional.

We note preliminarily that the " 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.' " (*Welsh v. Wisconsin* (1984), 466 U.S. 740, 750, 80 L. Ed. 2d 732, 742, 104 S. Ct. 2091, 2097, quoting *United States v. United States District Court* (1972), 407 U.S. 297, 313, 32 L. Ed. 2d 752, 764, 92 S. Ct. 2125, 2134.) The police therefore bear a heavy burden to demonstrate that a warrantless in-home arrest, which is presumptively unreasonable, is justified by the exigencies of a particular case. (*Welsh*, 466 U.S. at 749-50, 80 L. Ed. 2d at 743, 104 S. Ct. at 2097.) We do not believe that the State has met this burden here.

The State is, of course, correct that the police may make a warrantless entry into a residence when they reasonably believe that a person within is in need of

immediate aid. (*Mincey v. Arizona* (1978), 437 U.S. 385, 57 L. Ed. 2d 290, 98 S. Ct. 2408, 2413.) The requirements of this "emergency exception" are:

(1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.

(2) The search must not be primarily motivated by intent to arrest and seize evidence.

(3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *People v. Bondi* (1984), 130 Ill. App. 537, 539.

Additionally, although the police may seize incriminating evidence that is in plain view during the course of their legitimate emergency activities, the warrantless search must be strictly circumscribed by the exigencies which justify its initiation. *Mincey*, 437 U.S. at 393, 57 L. Ed. 2d at 300, 98 S. Ct. at 2413; *People v. Abney* (1980), 81 Ill. 2d 159, 173.

The State argues that the trial judge applied an improper legal standard in this case, as he required that the State show that the warrantless entry was motivated solely by the policemen's concern for the defendant's well-being, rather than requiring only that the entry not be primarily motivated by an intention to investigate or collect evidence relative to the possible offense of DUI. Although we agree with the State that the trial judge did not apply the correct legal standard, we also conclude that under the facts of this case, as found by the trial

court, any such error was harmless. It is clear that the State did not meet its "heavy burden" to show that this case fell within the "emergency exception."

First, the trial judge found that at the time the police entered the house they knew only that the defendant had returned home from the accident, was upstairs sleeping, and, according to a neighbor who would have no motivation to endanger his health, was "out of it" but "fine." The police therefore had no reasonable grounds to believe that the defendant required their immediate assistance to safeguard his physical well-being. See *Lamber v. State* (Okla. Crim. App. 1987), 745 P.2d 1185 (police lacked reasonable grounds for emergency warrantless entry into home when motorist involved in accident called out from within residence that he was all right).

Second, the State did not meet its burden to show that the entry was not motivated primarily by the intent to investigate or seize evidence in connection with the possible DUI offense. Indeed, the conduct of the police could scarcely have been more consistent with such a purpose and less consistent with an intention to tend to the defendant's possible injuries. Beyond checking the defendant's pulse and breathing, the police did nothing of record to investigate the defendant's possible injuries and a great deal to collect evidence for a possible DUI prosecution. Despite Officer Lewis' testimony that he was concerned that the defendant may have suffered internal injuries from the accident, he ordered the defendant to perform several field sobriety tests during which the defendant fell down a number of times. There is nothing of record to indicate that the police sought to provide medical assistance for the defendant's possible injuries.

Third, this is not a case where the officers' post-entry conduct was limited to achieving the objective justifying the entry. The police plainly did more than was "reasonably necessary to ascertain whether [the defendant was] in need of assistance and to provide that assistance." (2 W. LaFave Search & Seizure § 6.6(a), at 706 (2d ed. 1987).) As Professor LaFave has commented, "[a]ny conduct within by the officer which is in any way inconsistent with the purported reason for entry is a just cause for healthy skepticism by the courts." (2 W. LaFave Search & Seizure § 6.6(a), at 706 (2d ed. 1987).) Although, as we have noted, the police may seize incriminating evidence in plain view during a legitimate emergency entrance, we know of no case sanctioning police investigation as extensive as that involved here, even pursuant to a valid emergency. We therefore reject the State's argument that the warrantless entry and arrest were validated by the emergency exception.

We also reject the argument of the State that the officers' warrantless entry into the defendant's home was validated by their need to seize and preserve evidence of the defendant's blood-alcohol level. It is settled that warrantless entries into or arrests within a home are prohibited absent probable cause and exigent circumstances. (*Welsh v. Wisconsin* (1984), 466 U.S. 740, 749, 80 L. Ed. 2d 732, 743, 104 S. Ct. 2091, 2097; *Payton v. New York* (1980), 445 U.S. 573, 63 L. Ed. 2d 639, 100 S. Ct. 1371.) The trial judge specifically found that the police did not obtain the requisite probable cause until *after* they made the warrantless entry into the home. The State has never contested this finding. Even assuming *arguendo* that the suspected offense in this case is serious enough to create

an exigency (see *Welsh*, 466 U.S. at 750-54, 80 L. Ed. 2d at 743-46 100 S. Ct. at 2097-99), the possible destruction of evidence, therefore, does not validate the entry or subsequent arrest in this case.

We hold that, because the arrest on which the summary suspension of the defendant's driver's license was based was not a lawful and valid arrest, the denial of the defendant's petition for rescission of the suspension must be reversed.

Accordingly, the judgment of the circuit court of Du Page County is reversed, and the cause is remanded for further proceedings consistent with this decision.

Reversed and remanded.

REINHARD, P.J., and UNVERZAGT, J., concur.

United States of America

State of Illinois,)
Appellate Court,) ss.
Second District,)

I, LOREN J. STROTZ, *Clerk of the Appellate Court, in and for said Second Judicial District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true, full and complete copy of the decision of*

the said Appellate Court in the above entitled cause of record in my said office.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of the said Appellate Court, in Elgin, in said State, this 21st day of FEBRUARY, A.D. 1991.

/s/ Loren J. Strotz
Clerk Appellate Court,
Second District

APPENDIX

B

ILLINOIS SUPREME COURT
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October 2, 1991

Mr. William L. Browers
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No. 71808 – People State of Illinois, petitioner v. Kevin Krueger, respondent. Leave to appeal, Appellate Court, Second District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 24, 1991.